

United States District Court

Western District of Texas

Pecos Division

United States

v.

Thomas Arthur

No. P-19-CR-774-DC

Defendant's Motion for Clarification
Of Court's Order

Judge Counts:

This Court's comments about argument this afternoon gave counsel some doubts about their ability to effectively represent Mr. Arthur.

We understand that we may not tell the jury that we are First Amendment lawyers, nor that in this case we represent the First Amendment. Indeed, we represent Mr. Arthur, and his interests coincide with those of the First Amendment.

We will, of course, comply with the Court's order.

We are not, however, clear on how far that order applies.

Are counsel forbidden from referring to the fundamental constitutional right of free expression? From arguing that the rules that the jury has to follow are laid down by that right? From arguing that the jury's decision may have real and lasting reverberations to the right to free expression? From arguing that the right to free expression is beleaguered in America? From arguing that by acquitting Mr. Arthur, the jury honors the First Amendment?

For instance, during opening statement, would it be permissible to state, as a matter of establishing a theme with the jury the jury, in being instructed in the law of the case by the Court, will be called upon to pass on matters of constitutional importance and First Amendment dimension, such as answering whether the Government has proven that the challenged stories and drawings lack scientific, literary, political, or artistic value?

Mr. Arthur's right to a fair trial would be impeded by counsel not giving a full measure of rhetoric to his case, would be impeded by counsel's proper statements and arguments being interrupted with objections by their brethren on the other side, and would be impeded by those objections being sustained. It's hard to say which would be the greater harm.

Please advise us of the scope of the Court's ruling.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of this document will be delivered to the attorneys for the Government by the efile system when it is filed with this Court.



Mark Bennett